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BEFORE THE FEDERAL ELECTION COMMISSION

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In the Matter of)	
)	
MUR 6194)	CASE CLOSURE UNDER THE
SHEILA SMOOT FOR CONGRESS)	ENFORCEMENT PRIORITY
AND JOHANNA MARTIN, AS)	SYSTEM
TREASURER)	
MARTIN WEINBERG)	

GENERAL COUNSEL'S REPORT

Under the Enforcement Priority System, matters that are low-rated _____

_____ are forwarded to the Commission with a recommendation for dismissal. The Commission has determined that pursuing low-rated matters compared to other higher-rated matters on the Enforcement docket warrants the exercise of its prosecutorial discretion to dismiss these cases. The Office of General Counsel scored MUR 6194 as a low-rated matter.

In this matter, the complainant, Kamau Afrika, asserts that Sheila Smoot, a candidate for Alabama's 7th Congressional District, and her campaign committee, Sheila Smoot for Congress and Johanna Martin, in her official capacity as treasurer ("the Committee"), have raised funds through "numerous blog postings, Twitter and Facebook conversations," but have not filed any reports with the Federal Election Commission ("Commission"). In particular, the complainant appears to be alleging that Ms. Smoot failed to file her Statement of Candidacy within 15 days of becoming a candidate, as required by 2 U.S.C. § 432(e)(1), and that the Committee subsequently failed to timely file

1 its Statement of Organization, pursuant to 2 U.S.C. § 433, and financial disclosure reports,
2 pursuant to 2 U.S.C. § 434.

3 Additionally, the complainant maintains that Martin Weinberg, who owns and
4 publishes the blog Progressive Electorate ("Progressive"), at
5 <http://www.progressiveelectorate.com/>, and who is also allegedly affiliated with the Smoot
6 campaign, urged readers to make contributions to the campaign through a link to ActBlue,¹
7 which Progressive would then match. Attached to the complaint is a purported transcript of
8 an Internet conversation between Mr. Weinberg and an individual identified as "Racheal,"
9 dated March 22, 2009, during which Mr. Weinberg allegedly states that donations made to
10 the Smoot campaign through Progressive's website would be matched for a limited period
11 of time (i.e., Sunday). Additionally, Mr. Weinberg is quoted as saying that thousands of
12 dollars had already been raised through the site. The complainant also included a purported
13 statement from Ms. Smoot via Facebook.com, dated March 18, 2009, in which she
14 allegedly states that "one group" is helping her campaign raise funds on-line and that "they
15 have agreed to match contributions from members of this group" for a short period of time.

16 In response, the Committee asserts that Ms. Smoot's Statement of Candidacy and its
17 Statement of Organization² were filed with the Commission on April 21, 2009, before

¹ ActBlue, at <http://www.actblue.com/>, is a non-connected political action committee which is registered with the Commission. ActBlue, which was formed to promote the election of Democratic candidates, accepts contributions earmarked for Democratic candidates, which it then forwards to the recipient campaign committees.

² There appears to be some confusion about the candidate's first name. Although her Statement of Candidacy and her Committee's Statement of Organization refer to her as "Sheila Smoot," other sources, including the Committee's response to the complaint and Ms. Smoot's website, at <http://www.smootforcongress.com/>, refer to her as "Shelia Smoot." Here, we refer to the candidate as "Sheila Smoot," pursuant to the campaign's filings with the Commission.

1 Ms. Smoot had attained candidate status, as she had not yet received contributions in excess
2 of \$5,000. See 2 U.S.C. § 431(2)(A). Further, the Committee maintains that the allegations
3 contained in the complaint lack specificity and are erroneous, and that the conversations
4 included therein rely on hearsay and are not certified or authenticated.

5 In his reply, Mr. Weinberg reiterates the Committee's arguments with respect to the
6 candidate's and the Committee's filings with the Commission. In addition, Mr. Weinberg
7 states that Progressive is not a "Political Action Committee" (presumably, he means
8 "political committee"), and does not make direct contributions or expenditures, nor serves
9 as a conduit for receiving or disbursing funds.³ Rather, according to Mr. Weinberg,
10 "[c]ontributions that we make and have encouraged others to make are made through
11 ActBlue and are sent directly to the candidate."⁴

12 A review of filings with the Commission shows that Ms. Smoot's Statement of
13 Candidacy and the Committee's Statement of Organization were overnighted to the
14 Commission on April 21, 2009. Furthermore, the Committee's 2009 July Quarterly Report,
15 its first financial disclosure reports, reveals that it did not receive \$5,000 in contributions
16 until May 2009. It appears, therefore, that these filings were made timely.

17 This Office also notes that the public record does not reveal any contributions made
18 directly by Progressive to the Committee. Furthermore, in examining ActBlue's website,
19 this Office has only found \$397 attributed to donors associated with Progressive, as of

³ The Committee's financial disclosure reports indicate that Mr. Weinberg has contributed a total of \$218 to the Smoot campaign thus far.

⁴ After reviewing the public record, we were unable to independently verify the responses concerning contributions purportedly "matched" by Progressive.

1 May 20, 2009 (the date the complaint was processed by this Office), and a total of \$453, as
2 of November 18, 2009.⁵ Finally, the Committee's financial disclosure reports reflect that
3 Mr. Weinberg contributed only \$218 to the Committee, as of November 18, 2009.⁶

4 In summary, the candidate and Committee appear to have complied with their
5 registration and initial reporting requirements. Moreover, the denial made by
6 Mr. Weinberg, on behalf of himself and Progressive, concerning the alleged matching
7 contributions through Progressive, coupled with the lack of publically available information
8 concerning a possible method, scope, or magnitude of any potential violations, leads this
9 Office to conclude that the matter does not warrant the further expenditure of resources.
10 Accordingly, in furtherance of the Commission's priorities and resources, relative to other
11 matters pending on the Enforcement docket, the Office of General Counsel believes that the
12 Commission should exercise its prosecutorial discretion and dismiss the matter as to all
13 respondents. *See Heckler v. Chaney*, 470 U.S. 821 (1985).

⁵ There appears to be a disparity in the Committee's reports in that the Committee's 2009 July Quarterly Report shows an election cycle to date total of \$3,193 attributed to earmarked contributions coming through ActBlue, while its 2009 October Quarterly Report reflects the reduced amount of \$602 in earmarked contributions attributed to ActBlue for the same cycle.

⁶ The Committee's 2009 October Quarterly Report reflects \$458 in contributions received by Mr. Weinberg for the election cycle, but this Office could only locate entries on the Committee's disclosure reports supporting \$218 for the election cycle, as of November 18, 2009.

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RECOMMENDATIONS

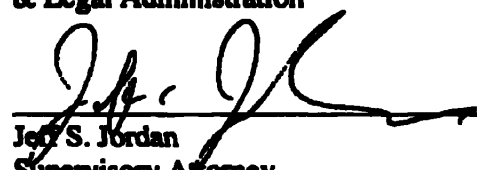
The Office of General Counsel recommends that the Commission dismiss
MUR 6194, close the file, and approve the appropriate letters.


Thomasenia P. Duncan
General Counsel

12/2/09
Date

BY:


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